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80-1774

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

No._____

INDEPENDENT PARTY OF GEORGIA,

Petitioner

vs.

AMERICAN PARTY OF GEORGIA, and
DAVID POYTRESS, SECRETARY OF
STATE OF GEORGIA,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

JESSE CLEVELAND
215 Copeland Road, N.E.
Lower Level
Atlanta, Georgia 30342
404-256-0888

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QUESTIONS PRESENTED

1. Whether the trial court erred in denying the petitioner a jury trial as permitted under Georgia state law to determine the factual issues asserted by the petitioner.
2. Whether the trial court erred in dismissing the petitioner's complaint for failure to state a claim upon which the trial court could grant relief.
3. Whether the legal right to a particular identified franchise from the State of Georgia can be litigated in a Georgia state trial court by a writ of quo warranto.
4. Whether the provisions of the Georgia Election Code pertaining to the granting of political franchises by the State of Georgia is unconstitutionally vague and indeterminate.

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1. Lorregan v. Lillard 55 S. Ct. 147, 293 U.S. 615, 79 L. Ed. 704

STATUTES

1. Georgia Code § 34-901 inclusive

IN THE SUPREME COURT OF THE UNITED STATES

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AMERICAN PARTY OF GEORGIA, and DAVID POYTRESS, SECRETARY OF STATE OF GEORGIA

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Independent Party of Georgia, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above entitled case on January 15, 1981.

Opinions Below

The opinion of The Supreme Court of Georgia is unreported and is printed in Appendix A hereto, infa, page 10. The judgment of the Fulton County Georgia Superior Court is printed in Appendix A hereto, infa, page 1. The Journal Entry of Judgment of the Fulton County Georgia Superior Court is printed in Appendix A hereto, infa, page 10.

JURISDICTION

The judgment of The Supreme Court of Georgia (Appendix A, infa, page 10) was entered on January 15, 1981. The jurisdiction of the Supreme Court is invoked under 28 USCA § 1257.

QUESTIONS PRESENTED

A. Whether the trial court erred in denying the petitioner a jury trial as permitted under Georgia state law to determine the factual

issues asserted by the petitioner.

B. Whether the trial court erred in dismissing the petitioner's complaint for failure to state a claim upon which the trail court could grant relief.

C. Whether the legal right to a particular identified political franchise from the State of Georgia can be litigated in a Georgia state trial court by a writ of quo warranto.

D. Whether the provisions of the Georgia Election Code pertaining to the granting of political franchises by the State of Georgia is unconstitutionally vague and indeterminate.

STATUTE INVOLVED

The Georgia Secretary of State is required to accept registration statements

from political parties and bodies by Georgia Code § 34-901. He may refuse to file the registration statement of a political party or body if the name of such party or body is identical with or deceptively similar to that of any other existing party or body which was organized earlier and licensed by the state, Georgia Code § 34-901(b). There is no further statutory requirement to be met to qualify a political party or body for a continuance of that said political franchise.

STATEMENT OF CASE

In this application, the petitioning Independent Party of Georgia seeks review of the order of the Superior Court of Fulton County, Georgia, which dismissed the petitioner's action in quo warranto, and the refusal of the Supreme Court of Georgia to grant relief from that judgment.

The Independent Party is legally defined as a political body under the Georgia Election Code. In its complaint, The Independent Party alleged that a group was not entitled to use the name "American Party of Georgia", that the respondent Secretary of State of Georgia failed to inquire into the legal authority of that group to use the name "American Party" and that the use of the name "American Party" should be terminated by the Secretary of State.

At the hearing of the complaint before the state trial court, the petitioner requested a jury trial of all factual issues, which the trial court refused to grant. The Secretary of State of Georgia filed a verified answer raising as a defense that the complaint failed to state a claim upon which relief could be granted, and a motion to dismiss which was granted by the trial

court. That was affirmed without opinion by the Supreme Court of Georgia on January 15, 1981.

REASONS FOR GRANTING WRIT

Georgia has been under the yoke of the Democratic Party state organization for an unbroken period of more than one hundred years. The trial judge could not listen to the petitioner's legitimate complaint becuase he came to his position as a result of political contributions to President Jimmy Carter. All the members of the Supreme Court of Georgia were elected or appointed to that court by the Democratic Party steamroller, and have no intention of doing anything to diminish its power; therefore the refusal of that court to consider the petitioner's appeal.

As a result, The American Independent Party can not use its full name in

the State of Georgia, but only the innocuous title of Independent Party. This prevents the citizens of Georgia from supporting a political force which carried the Georgia presidential electors for George Wallace in 1968.

The petitioner's attempt to litigate this injustice was axed by the Georgia court system upon the absurd technicality that the petitioner committed error by bringing its complaint in quo warranto. Although asserting further that the complaint could not be brought by means of mandamus, the Georgia officials fail to mention what would be the correct procedure should the petitioner wish to raise that issue again in the future. The inconsistency is all too obvious.

It has been demonstrated by the petitioner that under the cited provisions of the Georgia Election Code, all

a group of persons have to do in Georgia to permanently hold a particularly named state franchise, is to file registration papers and the filing fee. The Secretary of State has no concern if the organization holds any meetings or posts candidates for elective office thereafter.

Since the group calling itself "American Party" effectively ceased to function in Georgia in 1972, it is a violation of the petitioner's constitutional right to petition under the First Amendment, and the due process clause of the Fourteenth Amendment to deliberately deny it the use of its full political name which would be readily recognizable to the voters of Georgia.

Likewise, the refusal of Georgia courts to heed the decision of this

Court in Lorregan v. Lillard 55 S. Ct. 147, 293 U.S. 615, 79 L.Ed. 704, clearly stating that quo warranto proceedings may be maintained to forfeit or vacate the charter of a private corporation is contemptible itself.

Obviously if quo warranto reaches a private corporation in such a respect, it surely would be appropriate with regard to a public franchise such a state political franchise where the grant of such power is considerably more limited.

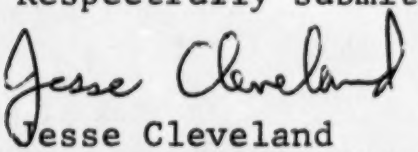
It is axiomatic that when the State of Georgia through the Secretary of State of Georgia dissolves private corporations in its state courts for failure to update their information with annual reports to the state government, the State of Georgia has no Constitutional right to deny a political organization the full use of its name

through deliberate lassitude.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX A

OPINIONS BELOW

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

INDEPENDENT PARTY
OF GEORGIA,

Plaintiff

CIVIL ACTION
NO. C-62202

v.

AMERICAN PARTY OF GEORGIA
DAVID B. POYTHRESS, SECRETARY
OF STATE OF GEORGIA

Defendants.

ORDER

I. STATEMENT OF THE CASE

In this action, the Independent Party of Georgia (hereinafter "Independent Party") seeks to divest one of the defendants of the use of its name, American Party of Georgia (hereinafter "American Party"). Both the Independent

Party and the American Party are political bodies under the Georgia Election Code. See Ga. Code § 34-103(s). The legal means selected by the plaintiff is a writ of quo warranto. See Ga. Code Ch. 64-2.

In its complaint[1/], the plaintiff alleged that the American Party was not entitled to use its name, that the defendant Secretary of State failed to inquire into the legal authority of the American Party to use its name and that the use by the American Party of its name should be terminated by the Secretary of State.

[1/] The plaintiff filed an "Application for leave to file an information in the nature of quo warranto" and an "Affidavit of Jesse Cleveland." These are collectively referred to herein as the complaint. The application for leave to file was granted by order of this Court on April 11, 1980. All defendants were served with the complaint and April 11 order of this Court.

Under Ga. Code § 34-901(a), each political party and body must file a registration statement with the Secretary of State. This registration statement must contain certain information concerning the party or body such as its name, the date and place of its creation, its general purpose and its officers. Ga. Code § 34-901(a). No registration statement may be filed if the name of the party or body filing the statement "...is identical with or deceptively similar to the name of any other existing party or body which was organized earlier and is eligible at the time to file its registration statement with the Secretary of State." Ga. Code § 34-901(b). The penalty for failure to comply with the registration requirements is that a noncomplying party or body may not have its

name or the names of its candidates placed on any nomination petition, ballot or ballot label. Ga. Code § 34-901(e).

This case was heard on May 9, 1980. At the hearing, all parties appeared. The plaintiff requested a jury trial of all factual issues which the Court denied for the reasons set forth herein. The Secretary of State had filed a verified answer raising as a defense that the complaint failed to state a claim upon which the Court could grant relief. He had also filed a brief in support of that defense, and at the end of the plaintiff's case, the Secretary of State moved to dismiss under Ga. Code §§ 81A-112(b)(6). For the reasons set forth below, that motion is GRANTED.

II. QUO WARRANTO IS NOT APPROPRIATE IN THIS CASE

The plaintiff did not allege or argue that the officers of the defendant American Party were wrongly holding their offices. Rather, the plaintiff's sole argument was directed to the alleged improper use by the defendant American Party of its name. Quo warranto, however, is not a proper proceeding in which to try the right to use a particular name. In fact, quo warranto is proper only to try the title to an office, and while it may be used to try the title to a political party office, Morris v. Peters, 203 Ga. 350 (1948), it is nevertheless not the appropriate procedure for determining the right of a political organization to use a particular name. See Ga. Code § 64-201; Morris v. Peters, supra, at 363.[2/]

2/"The issue in a quo warranto proceeding is the title of the incumbent to an office from which he is sought to be ousted." Id.

III. THE PLAINTIFF IS NOT ENTITLED TO RELIEF IN MANDAMUS

Even if the plaintiff's complaint should be construed as sounding in mandamus, the plaintiff is entitled to no relief. The duties of the Secretary of State are prescribed by the General Assembly. Ga. Const. Art. V, Sec. III, Par. II (Ga. Code Ann. § 2-2902). Among the duties thus imposed on the Secretary of State is the requirement to accept registration statements from political parties and bodies. Ga. Code § 34-901. There is no requirement, or even authorization, for the Secretary of State to inquire into the legal authority of any party or body to use a particular name except that he is to refuse to file the

registration statement of a party or body if the name of such party or body is identical with or deceptively similar to that of any other existing party or body which was organized earlier and is eligible at the time to file its registration statement with the Secretary of State. Ga. Code § 34-901(b).

The plaintiff in this case seeks far more than the Secretary of State is authorized to provide. The plaintiff has alleged that the charter of the American Party should not have been granted and that the use by the American Party of its name should be terminated by the Secretary of State. Presumably, the plaintiff wishes to have this Court order the Secretary of State to revoke the charter of the American Party and to terminate its use of the name "American Party." Such relief

would be in the nature of mandamus.

It is clear, however, in view of the duties of the Secretary of State as set forth in Ga. Code § 34-901, that such relief would be inappropriate. For mandamus to lie, the duty which the plaintiff seeks to have enforced must be a duty arising by law, either expressly or by necessary implication, and the law must not only authorize the act to be done, but must require its performance. Ga. Code § 64-102; Smith v. Branch, 215 Ga. 744 (1960). There is no duty on the Secretary of State of Georgia to revoke any political organization's charter. Quite the contrary, he is only required to receive the charter of such an organization with the organization's registration statement. Ga. Code § 34-901(a)(iii). Moreover, defendant Poythress is neither directed nor authorized to

terminate the use by a political organization of a particular name. As has been shown above, his only authority is to refuse to file the registration statement of a political party or body with a name identical with or deceptively similar to that of an existing party or body. Ga. Code § 34-901(b).[3/] This authority, however, does not expressly, or by necessary implication, authorize, much less direct, the Secretary of State to terminate the use by a duly registered political body of its name on the demand of another political body, which is precisely what is sought by the plaintiff. Finally, there is no inherent authority of the Secretary of State to do that which the plaintiff seeks. See Tucker v. Wilson, 198 Ga. 474 (1944).[4/]

[3/] The plaintiff did not argue at the

hearing that at the time of the filing by the American Party of its registration statement that the Secretary of State should not have permitted the filing by virtue of Ga. Code § 34-901(b).

4/ At the end of oral argument, the plaintiff conceded that mandamus was not a proper remedy here.

WHEREFORE, it is ORDERED that the motion of Secretary of State is GRANTED andthis case is DISMISSED.

This_____day of May, 1980.

JOEL J. FRYER
Judge, Atlanta Judicial Circuit

DECISION NO. II
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In the Supreme Court of Georgia

Decided: Jan. 15, 1981

3644. INDEPENDENT PARTY OF GEORGIA v. AMERICAN PARTY OF GEORGIA and DAVID B. POYTHRESS, SECRETARY OF STATE.

Judgment affirmed without opinion opinion pursuant to Rule 59. All the Justices concur, except Gregory, J.

CERTIFICATE OF SERVICE

On the 14th day of April, 1981, a true copy of the foregoing instrument was mailed to the following persons by United States Certified Mail, with sufficient postage thereon:

Michael Bowers
Senior Assistant Attorney-General, State of Georgia
State Judicial Building
Atlanta, Georgia 30303

Dr. Frank Benning
4098 Stratford Road N.E.
Atlanta, Georgia 30318

Jesse Cleveland
Jesse Cleveland